

October 26, 2023

VIA ECF AND ELECTRONIC MAIL

The Honorable Katherine Polk Failla
United States District Court for the Southern District of New York
40 Foley Square
New York, New York 10007

Re: In re Tether and Bitfinex Crypto Asset Litigation, 19-CV-09236 (KPF)

Dear Judge Failla,

Pursuant to the Court's June 15, 2023 Amended Civil Case Management Plan and Scheduling Order (the "CMO," ECF No. 387), and in advance of the October 31, 2023 pretrial conference, the parties write jointly regarding the status of the above-referenced litigation.

(1) A Statement of All Existing Deadlines, Due Dates, and/or Cut-Off Dates

The parties agree that Plaintiffs' motion in support of class certification and any accompanying expert reports are due November 20, 2023; Defendants' opposition is due February 20, 2024; and Plaintiffs' reply is due May 22, 2024. CMO ¶ 5(i). Requests to admit are due November 20, 2023. *Id.* ¶ 6(e). All remaining deadlines, including for expert discovery on issues other than class certification, are keyed off any order certifying a class. *Id.* ¶¶ 5(j-k); 10.

Plaintiffs seek no changes to this schedule.

The B/T Defendants' position¹ is that Plaintiffs' motion for leave to amend their complaint will very likely impact these deadlines. ECF Nos. 479-480.

(2) A Brief Description of Any Outstanding Motions

On October 24, 2023, Plaintiffs filed a motion for leave to amend the complaint and a motion to seal that motion along with the proposed Second Amended Complaint.

Plaintiffs' position is that they moved to amend promptly after the close of fact discovery to conform the pleadings to evidence produced in discovery and streamline the case. ECF Nos. 479-480. Plaintiffs state that they have shown good cause to amend and that the proposed Second Amended Complaint reduces the number of claims, the number of defendants, and the length of the proposed Class Period. ECF No. 480-1. Plaintiffs disagree with Defendants' characterization of their motion and proposed amendment and would oppose any request by Defendants to file a second motion to dismiss if leave to amend is granted.

The B/T Defendants strenuously object to Plaintiffs' belated attempt – 22 months after the deadline to amend and a day after the close of fact discovery – to assert claims based on entirely

¹ Defendant Philip G. Potter joins the positions set forth by the B/T Defendants.

new allegations and theories that are inconsistent with and contrary to the evidence. ECF No. 194 ¶ 4. The B/T Defendants intend to oppose Plaintiffs' motion. Additionally, if the Court were to allow Plaintiffs to file the proposed Second Amended Complaint, the B/T Defendants anticipate filing a motion to dismiss.

No other motions are pending.

(3) A Brief Description of the Status of Discovery and of Any Additional Discovery that Needs to Be Completed

The parties completed fact discovery, including depositions of fact witnesses, on October 23, 2023. CMO ¶¶ 5(h); 6(d). The parties have yet to take expert discovery related to class certification or merits issues. The parties do not seek additional discovery.

(4) A Brief Description of the Status of Any Settlement Discussions and Whether the Parties Would Like a Settlement Conference

On May 10, 2023, the Court stayed the litigation with respect to Bittrex following notice of Bittrex's Chapter 11 bankruptcy, ECF No. 349, and on October 23, 2023, the parties stipulated to the dismissal of Poloniex, ECF No. 476. The remaining parties have not engaged in settlement discussions. The CMO requires counsel for the parties to meet in person for at least one hour on or before November 6, 2023. *See* CMO ¶ 9.

The parties do not request a settlement conference.

(5) A Statement of the Anticipated Length of Trial and Whether the Case Is to Be Tried to a Jury

The case is to be tried to a jury. The parties' best current estimate of the length of trial is six weeks. *See* CMO ¶¶ 15-16.

(6) A Statement of Whether the Parties Anticipate Filing Motions for Summary Judgment, Including the Basis of Any Such Motion

Plaintiffs do not currently anticipate filing a motion for summary judgment but may reassess after the close of expert discovery.

The B/T Defendants believe that this lawsuit is entirely meritless and seek to terminate it at the earliest possible opportunity. To the extent the litigation is still pending, the B/T Defendants intend to move for summary judgment. The primary basis for such a motion would be that, after two years of fact discovery, there is absolutely no evidence in the record supporting the claims asserted by Plaintiffs in the Amended Complaint or the new claims that Plaintiffs seek to assert in the proposed Second Amended Complaint.

(7) Any Other Issue that the Parties Would Like to Address at the Pre-Trial Conference or Any Information that the Parties Believe May Assist the Court in Advancing the Case to Settlement or Trial

Plaintiffs clarify that they intend to base their upcoming motion for class certification on their proposed Second Amended Complaint, which conforms their remaining claims to evidence produced in discovery.

The B/T Defendants strongly disagree with Plaintiffs' characterization of their proposed Second Amended Complaint and intend to oppose Plaintiffs' motion for leave to amend.

Respectfully submitted,

/s/ Andrew R. Dunlap

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